

The Catalan Referendum, regional pressures, the EU, and the “Ghosts” of Eastern Europe

By Joseph E. Fallon

What is happening in Catalonia is being repeated elsewhere in the EU in less bloody manner. Bavaria and Venice are examples of two of the larger regions/nations in Western Europe seeking greater autonomy from their State on the road to independence. While the EU is negotiating the secession of one of its members under Article 50, other pressure are building which may amount to an existential threat to the EU itself. How should it react to potential unilateral declarations of independence which, if unaccepted, may amount to unsettled borders for existing members and for new applicants – breaking a fundamental condition of EU membership? There has been little exploration of this topic, especially in the context of previous international commitments.

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To paraphrase a familiar saying, “History repeats itself, first as farce, again as tragedy”. An attempt in 2014 to hold a referendum on Catalan independence was blocked by Spain's Constitutional Court in a decision worthy of the theatre of the absurd. The court ruled the referendum on secession “was not in itself against the law, if it was conducted within the framework of the law” which prohibits secession.

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In 2017, the Constitutional Court of Spain ruled a Catalan referendum on independence illegal on the ground “Spain’s constitution does not recognize the right to self-determination” – a ruling supported by the EU.

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This ruling disregards Spain's legal commitments under three international treaties/conventions on the right to national self-determination to which Madrid is a signatory - the *U.N. Charter*, the *International Covenant on Civil and Political Rights*, and the *International Covenant of Economic, Social and Civil Rights*.

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Article 1 in both latter documents state:

"All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

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These are the legal documents that justified the decision of Spain and the (then) EC to recognise the unilateral declarations of independence by states seceding from Yugoslavia and the Soviet Union in 1991-1992, in violation of the constitutions of Yugoslavia and the Soviet Union and in defiance of the official opposition of Belgrade and Moscow. Now the "ghosts" of Yugoslavia and the Soviet Union have returned to haunt Spain, the EU, and maybe others of the EU27.

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For Catalans, of the votes able to be cast, 90 percent voted for independence. What this referendum confirmed was the long-recognised overwhelming Catalan desire to exercise their right to national self-determination.

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The Constitutional Court of Spain and the Spanish government of Prime Minister Rajoy declared the Catalan referendum illegal.Â Acting on a Spanish judge's order to prevent the referendum from taking place, Madrid "placed the Catalan police under the control of the Spanish Interior Ministry" and sent in the National Police Corps and the Guardia Civil.Â

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As AP reported: "*Hundreds of police armed with truncheons and rubber bullets were sent in from other regions to confiscate ballots and stop the voting, and amateur video showed some officers dragging people out of polling stations by the hair, throwing some down stairs, kicking them and pushing them to the ground. Anguished, frightened screams could be heard...with more than 800 people injured as riot police attacked peaceful protesters and unarmed civilians trying to cast their ballots* ."

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That night, in a televised address, Spain's Prime Minister Rajoy "thanked the Spanish police, saying they had acted with "firmness and serenity"" This was followed on October 3rd

by a rare television speech by King Felipe VI of Spain in which he lashed out at supporters of the Catalan referendum.

"*With their decisions, they have systematically undermined the rules approved legally and legitimately, showing an unacceptable disloyalty towards the powers of the state...*

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Earlier, on September 27th

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, Spain's National Court said it planned to investigate possible sedition charges for demonstrators who took part in a massive protest last week against a police crackdown on preparations for the vote.

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Madrid has seized control of some of Catalonia's finances and is moving towards dissolving the democratically elected regional parliament and imposing direct rule by invoking Article 155 of Spain's Constitution.

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The contrast between the Scottish and the Catalan referendums is striking. In the former, there was dialogue, debate, peaceful voting and peaceful acceptance of the political outcome.Â In the latter, there was a police riot.Â

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Like Spain's Constitutional Court, Italy's Constitutional Court denied a referendum on independence for Venice in 1992 and, again, in 2000.Â A 2014 referendum held on independence for Venice was unofficial, non-binding, and conducted online.Â Of the votes cast online, 89 percent voted "yes" to independence. Italy's Constitutional Court permitted October 22, 2017 referenda on autonomy for Venice and Lombardy, both of which were endorsed overwhelmingly but on turnovers in the 40%-50% range.

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In Germany, the Constitutional Court did what its counterparts have done in Spain and Italy, and tried to do in the former Soviet Union, uphold the integrity of state borders. In doing so, Berlin is violating international law on national self-determination. It denies to Bavaria what it granted to the 19 states that seceded from Yugoslavia and the Soviet Union. In fact, Germany rushed to be first to recognize the independence of Slovenia and Croatia "in open disregard of an EC agreement to recognize the two states under EC conditionality requirements"

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In denying Bavaria the right to hold a referendum on independence, *The Washington Post* reports, the Constitutional Court ruled: “

In the Federal Republic of Germany ... states are not ‘masters of the constitution,’

” [“...Therefore there is no room under the constitution for individual states to attempt to secede. This violates the constitutional order.”

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The EU supports the rulings of the Constitutional Courts in Spain, Italy, and Germany.Â The EU opposes secessionism in Western Europe as adamantly as the EC supported secessionism in Eastern Europe. As reported by the *BBC*, on October 17, in Luxembourg, European Commission President Jean-Claude Juncker stated “

If we allow Catalonia -- though it's not our business -- to separate itself from Spain, others will do the same. And I wouldn't like to have that...”

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Legally, what was applied by Spain and the EC to Eastern Europe has to be applied to Western Europe. Recognition of independence from Yugoslavia and the Soviet Union entails recognition of peoples' independence from Spain, Italy, and Germany.

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On December 16, 1991, the EC issued its conditions for recognizing the unilateral declarations of independence by states seceding from Yugoslavia and the Soviet Union.Â Entitled “*Declaration on the 'Guidelines on the Recognition of New States in Eastern Europe and in the Soviet*

Union”

these same “guidelines” should be applied to Catalonia, Bavaria, Venice, and Lombardy.

“The Community and its Member States confirm their attachment to the principles of the Helsinki Final Act and the Charter of Paris, in particular the principle of self-determination... Therefore, they adopt a common position on the process of recognition of these new States, which requires:

- respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights*

- guarantees for the rights of ethnic and national groups and minorities in accordance with the commitments subscribed to in the framework of the CSCE*

- respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement*

- acceptance of all relevant commitments with regard to disarmament and nuclear nonproliferation as well as to security and regional stability*

- commitment to settlement by agreement, including where appropriate by recourse to arbitration, all questions concerning State succession and regional disputes.*

The Community and its Member States will not recognize entities which are the result of aggression...” [Query: If Spain engages in aggression to retain Catalonia, will it be expelled from the EU?]

The same day a supplement document, the *Declaration on Yugoslavia*, was adopted by the Extraordinary EPC Ministerial Meeting in Brussels, which is equally applicable to Spain, Italy,

and Germany.

“The European Community and its Member States discussed the situation in Yugoslavia in the light of their Guidelines on the recognition of new states in Eastern Europe and in the Soviet Union. They adopted a common position with regard to the recognition of Yugoslav Republics. In this connection they concluded the following:

They are therefore inviting all Yugoslav Republics to state by 23 December whether

- they wish to be recognized as independent States

- they accept the commitments contained in the above-mentioned Guidelines - they accept the provisions laid down in the draft Convention

- especially those in Chapter II on human rights and rights of national or ethnic groups”

If the Humpty Dumpty of the EU27 falls, where are all the EU's horses and all the EU's men to put it back together? Currently in the stables, there is scant evidence they've even started to think about the tectonic forces which may be tearing him from his wall.Â

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